Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

F I S C A L I M P A C T R E P O R T

SPONSOR Cervantes/Akhil/A. Romero **ORIGINAL DATE** 2/12/19 **LAST UPDATED** **HB**

SHORT TITLE Electric Utility Resource Procurement **SB** 456

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	$0.0	$373.1	$373.1	$746.2	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with SB 275, HB 283, and HB 15

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

SB 456 adds a new section to the Public Utility Act that would only affect investor-owned electric utilities. It defines and describes the competitive request for proposals ("RFP") process, to be monitored by an independent evaluator. This RFP process will be required any time an investor owned electric utility (IOU) files an application to procure a new energy resources, whether through a certificate of convenience and necessity or a purchased power agreement, or if procuring a new energy resource is part of a utility's integrated resource plan. SB 456 also describes the independent evaluator, including the selection/appointment process, the contract, and the duties.

The Public Regulation Commission provided the following:

Paragraph A: This is a definitions paragraph.

Paragraph B: Mandates that a utility shall issue a competitive Request for Proposals ("RFP") whenever it intends to apply for commission approval for procuring a new energy resource that is either utility-owned (thus needing a certificate of public convenience and necessity ("CCN"))

or through a purchase power agreement ("PPA"). The competitive RFP shall: (i) provide reasonable opportunity to bid; (ii) provide an evaluation framework that will be used to judge bids, including the inputs, assumptions, criteria and models used; (iii) tries to level the playing field between PPA proposals and utility-owned resource proposals; and (iv) complies with all applicable commission regulations.

Paragraph C: Any application for the procurement of a new energy resource, including a CCN or approval of a PPA, shall provide and describe the responses to the competitive RFP process.

Paragraph D: Bidders in the competitive RFP process shall be permitted access to the modeling inputs and assumptions that were used to evaluate the bid as they apply to the bidder's particular facility, with sufficient time that the bidder is allowed to correct errors and omissions before the end of the RFP process. If it is determined that there is an error or omission in the utility's modeling and assumptions, the Commission shall require the utility to perform additional modeling to fairly and accurately represent the resources presented in the bids.

Paragraph E: utilities cannot use the RFP to require the resource's location to be on a utility-owned or -controlled site and then refuse to allow or consider a proposal at the site by an independent power producer ("IPP") proposing a PPA. The only exception is if the utility can show the Commission that it would not be feasible to lease or transfer the site to the IPP for reasonable compensation.

Paragraph F: Approximately four months (120 days or more) prior to filing an integrated resource plan ("IRP") with the Commission or an application to procure a new energy resource, the utility shall file with the Commission the name and qualifications of an independent evaluator agreed upon by the utility, the Commission's Utility Division staff, and the attorney general ("the IE committee") to be the monitor of the RFP process and a proposed contract between the commission and the independent evaluator. If the utility is not seeking to procure any new resources in the IRP, then it does not need to file the application for the appointment of the independent evaluator or engage in a competitive resource procurement process.

Paragraph G: if the IE committee can not agree on an independent evaluator, the utility must notify the Commission, which shall then propose an independent evaluator and an IE contract.

Paragraph H: at least 120 days before the utility begins considering a CCN application or an application for approval of a PPA, the Commission shall "provide public notice of the name and qualifications of the proposed IE." Within 7 days of providing public notice of the proposed IE, "an interested person, organization or entity may file a verified protest" …… "for good cause shown."

Paragraph I: if the 7-day notice period after the Commission provides the name and qualifications of its proposed IE (as described in Paragraph H) expires, the Commission "may by written decision" appoint the person who was noticed. If the Commission does not appoint that person, then it must propose the name and qualifications of another person for IE and go through the process described in Paragraph H again. The Commission can fire the IE at any point, subject to the terms agreed upon in the contract.

Paragraph J: once the Commission decides to appoint an IE, it shall by written decision approve a contract. The Commission pays the IE and the utility reimburses the Commission and the

ratepayers reimburse the utility through rates. The contract terms shall prohibit the IE from "assisting any entity in making proposals to the commission for a period of three years from the date the contract terminates or expires." The Commission can fire the IE at any point, subject to the terms agreed upon in the contract.

Paragraph K: the IE shall have prompt access to all the utility's models, documents, data, and so on used by the utility to develop its competitive RFP. The utility shall provide the IE with the bid evaluation results and modeling runs in a timely fashion. The IE will verify the results of the competitive RFP process and investigate if the RFP process "reasonably invited and considered all feasible resource options to satisfy the utility's service needs."

Paragraph L: the IE will advise the Commission if the competitive RFP is reasonable and sufficient to solicit and evaluate bids in a fair and reasonable manner.

Paragraph M: if the IE finds a problem or deficiency in the RFP, he/she must promptly notify the utility. The utility responds to the notice and then the IE notifies the Commission of the nature of the problem or deficiency and the utility's response and resolution of the issue. This will all be part of the Commission's record in the docketed resource procurement case.

Paragraph N: prior to the Commission's evidentiary hearing in a resource procurement case, the IE shall report to the Commission whether the RFP process, including all inputs, was "reasonable, competitively fair and sufficient to reasonably identify the most cost-effective option among feasible resource alternatives available."

Paragraph O: The Commission shall schedule at least one procedural conference between the utility, the Commission, and other intervenors in the case where they may question the IE about his/her findings. The IE's opinions, determinations and statements shall constitute evidence and will be part of the permanent record.

Paragraph P: the IE shall not be a party to a resource procurement case but will testify if called upon.

Paragraph Q: the utility may request a waiver from the requirements of this section or the requirements of the rules the Commission creates to implement this section if it can demonstrate extraordinary circumstances exist. The utility must demonstrate that the waiver and the alternate method of procuring an energy resource are necessary for the public interest. Such a request may otherwise satisfy all applicable commission rules about waivers of or variances from Commission rules.

Paragraph R: the competitive RFP process does not apply to a special service contract customer who pays all costs for the resource and whose contract is approved by the Commission.

Paragraph S: the IE's work shall be public record, except where information deemed competitively confidential is protected. The confidentiality restriction shall last two years past the Commission's decision on the specific resource procurement application unless good cause is shown for longer.

Paragraph T: the Commission has six months to effect rulemakings to implement this new section.

FISCAL IMPLICATIONS

SB456 does not carry an appropriation. However, the PRC states that they will need an additional 4 FTE to perform all requirements within SB456. The costs of the 4 FTE will be $373.1 thousand per fiscal year. This will be a recurring expense to the general fund.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following:

Determining the requirements of the IE appears to be one of the most significant issues.

Integrated resource plans are mentioned in Section F, which requires the utility to file an agreed-upon independent evaluator's name and qualifications with the the Commission if the utility seeks to procure any new resource in its integrated resource plan. An IRP is merely a long-term plan or forecast for what a utility believes its will need in its portfolio to meet projected load growth. As a part of this 3-year process, the utility develops multiple scenarios, meets with all interested parties monthly, approximately, over the course of a year and then prepares the IRP. The IRP focuses on its most cost effective portfolio, but typically lists all the other scenarios considered. So while there may be resources listed as needed and that a utility is planning for, the IRP application and hearing is not a procurement application. There would be nothing for the competitive RFP process to evaluate although it might be an indication of upcoming procurements that would require the Commission and the committee that will nominate the IE to begin to consider names and qualifications.

Some of the timelines in SB 456 are contradictory. Given that some of the paragraphs have 120-day timelines where the utility cannot file its application for a new resource or IRP or CCN until the IE issue is decided, this could cause costly delays for a resource procurement that may be necessary to serve the public interest or ensure compliance with the Renewable Portfolio Standard mandates.. Yet, SB 456 provides that the IE shall advise the Commission that the utility's competitive RFP is reasonable and sufficient to solicit and evaluate bids in a manner consistent with the public interest, which should probably happen before the bidding process takes place, but appears to occur after all bids have been submitted.

SB 456 mandates that bidders in the competitive RFP process shall have access to the modeling inputs and assumptions used by the utility to evaluate the proposed resource in the bid in time for errors and omissions to be corrected before the competitive RFP process is completed. (Paragraph D). However, our understanding of how the RFP process works is that there is a closing date to the process and only after that does the evaluation period begin. So the requirement of this paragraph may not be practical.

Paragraph D mandates a rulemaking to define "errors or omissions" that may exist in the utility's modeling and assumptions that are used to evaluate submitted bids. During the competitive bidding process, if "it is determined that an error or omission …. Exists in the utility's modeling and assumptions" then the Commission shall require additional modeling on the part of the utility to confirm that electric generation and energy storage facilities are fairly and accurately

represented. This paragraph is not clear as to who will determine that there is an error or omission. It appears that it may be the bidder since the beginning of the paragraph says that bidders shall be permitted access to the utility's modeling inputs and assumptions so that they can correct errors and omissions before the RFP process ends. Ignoring the problematic timeline issue that was mentioned previously in this section, it would be important that unsuccessful bidders could not manipulate the result claiming errors or omissions and forcing additional modeling until their bid is chosen. On the other hand, utilities make mistakes and there must be a process for addressing it when this occurs.

Paragraph E seems to suggest that it utility may be required to lease or transfer a utility-owned site to an independent power producer for reasonable compensation. But it doesn't define under what scenarios that might occur (i.e. if the IPP won the bid) nor does is say what reasonable compensation might be or who might determine if it is reasonable. This could prove complicated if parties cannot agree on reasonable compensation. This may set up the IPP's bid to be needlessly delayed or not selected.

There are conflicting priorities and timelines for appointing the IE and the IE contract. A committee comprised of the utility, the Utility Division Staff, and the Attorney General will propose an IE. It is not clear who or how many represent each organization. They are to agree on an IE and a proposed contract and submit it to the Commission. If they cannot agree, then the utility notifies the Commission, which shall then "name an individual it proposes to appoint… and propose a contract between the Commission and the IE." (Paragraph G).

However, Paragraph H says that approximately four months (120 days at least) before the utility even files its application for a CCN, the Commission shall notify the public of the name and qualifications of its proposed IE, giving anybody in the public, or any organization, seven days afterwards (it is unclear if these are calendar days or business days) to file a verified protest for good cause shown. The question becomes, if this is done before the utility even files its application for which the IE will be needed, how will the Commission or the public or any interested organization have any basis for judging what qualifications would be needed to properly evaluate the competitive RFP? Would the specifics of the CCN application even be known by anybody outside of the utility four months before filing? What is meant by a "verified protest?" How is "good cause shown" defined? These questions should be resolved.

The competitive RFP process only applies when utilities seek to procure new resources in the IRP process and is not needed in the IRP otherwise (Paragraph F). It also applies for any application to procure a new resource. But previously in Paragraph F, it says that the utility shall file for the Commission to appoint the independent evaluator chosen by the independent evaluator committee (utility, Utility Division staff at the PRC, and the Attorney General) as well as the contract between the Commission and the IE, at least 120 days before the utility files its IRP or an application for a new energy procurement. This means that even before the 120 day deadline to file the name and qualifications, the IE selection committee (utility, Utility Division staff, and the attorney general) must meet to agree upon a nominee for IE. From a practical point of view, those non-utility parties should then have to have access to the application to be filed 120+ days later in order to understand what resources are to be procured and therefore the qualifications needed. It does not seem likely that utilities will be able to complete their applications six months prior to filing in order to make it available to the IE committee. If an IRP or resource procurement application involves several new procurements, is one IE sufficient for the entire process or would there need to be more than one?

Paragraph J states that the Commission shall approve a contract between the IE and the Commission once it has decided to appoint an IE. The Commission pays the IE, the utility reimburses the Commission and then can include the expense through rates. So ultimately ratepayers will pay for the IE. It seems like there might be an unnecessary layer of administration there that could cause lag time between parties getting reimbursed. Since the Commission is in charge of the contract and has the power to terminate the IE under the terms of the contract, there would be one less layer if the utility paid the IE directly and recovered the cost from ratepayers like it does other expenses.

It appears that the utility will evaluate the bids submitted in response to its competitive RFP and once it has evaluated and scored them all, it will submit the results to the IE who will independently evaluate them (Paragraph K). He or she will evaluate if the process was conducive to all feasible resource options submitting bids. The term "all feasible resource options" could lead to confusion, especially when Paragraph E is considered, where the utility may have to show, in certain instances, that it would not be feasible to lease or transfer a utility site to an independent power producer.

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission provided the following:

Various rulemakings are required by SB 456 within six months of the effective date of becoming law (Section T): (i) rulemaking to define what is an error or omission in the utility's modeling and assumptions is setting up the RFP (Paragraph D); (ii) rulemakings are implied to implement the requirements of this section (Paragraph Q).

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB 456 conflicts with SB 275, HB 283, and HB 15 which also require competitive bidding practices for rural electric distribution cooperatives. Those three bills also have different timelines for the application, final orders, and a 40-day time period in which to declare the RPS procurement plan deficient.

OTHER SUBSTANTIVE ISSUES

The Public Regulation Commission provided the following:

In 2018, the PRC commenced an inquiry into the procurement practices, including standards pertaining to the issuance and evaluation of RFPs by IOUs operating in New Mexico, and established a workshop schedule to study the same – Docket No. 18-00030-UT. The Commission has held two workshops to determine whether it should promulgate rules establishing standards for procurement of supply side resources, including standards for RFPs. The first workshop was held on March 14, 2018, and a second workshop was held on April 6, 2018.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Electric IOUs have varying practices when it comes to issuing RFPs. On occasion they have hired independent evaluators themselves to oversee an RFP. How transparent and competitive the current process is can be a contentious issue in the hearing. Regardless of whether SB 456 is enacted, the NMPRC may determine that it should promulgate rules establishing standards for procurement of supply side resources, including standards for RFPs.

JM/gb